IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 1285 of 2006.

Reserved on: 23.10.2007.

Decided on: 05.11.2007.

Anil Kumar Mehta. … … Petitioner.

Versus

Presiding Officer & Another. … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the Petitioner: **In person.**

For Respondent No.2: **Mr. Vishal Panwar, Advocate.**

Rajiv Sharma, Judge:

A challenge has been laid to the order passed by the Labour Court, Shimla, dated 17.11.2006 in application N.139/2003. The petitioner was permitted to file an amended writ petition vide order dated 8th March, 2007. Thereafter the matter came for hearing before the Division Bench on 18th July, 2007. The order dated 18th July, 2007 is reproduced in its entirety and the same reads thus:-

"Amended writ petition filed.

According to the petitioner, on 10th November, 2004, his application under Section 36(3) of the

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Whether reporters of local papers may be allowed to see the judgment? Yes.

Industrial Disputes Act was allowed and the respondent-Company was not permitted to be represented by a counsel. He further submits that thereafter Shri Abishek Sharma, Legal Advisor of the Company, kept appearing and the matter was adjourned from time to time till 17.11.2006, when Mr. Rahul Mahajan was permitted to appear for the Company by the Presiding Officer. If these allegations are correct, it shows total dereliction of duty on the part of the Presiding Officer inasmuch as he has not even cared to see the previous order passed by the Labour Court itself. Therefore, to verify these fact, records of the case be called for. List the matter on 20th August, 2007. Respondent No.2 may also file his reply on or before 13th August, 2007, with an advance copy to the petitioner and the petitioner may file his rejoinder before 20th August, 2007."

The writ petition was admitted on 26th September, 2007. The mentioning and reproduction of the order passed by this Court has been necessitated due to the submissions made by the petitioner in person with regard to procedural impropriety committed by the Presiding Judge of the Labour Court, Shimla by permitting the Advocates to appear even after the order dated 10.11.2004 passed on the application filed under Section 36(3) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

The brief facts necessary for the adjudication of this petition are that the applicant had sent a demand notice to the employer. Consequently, the Labour Officer-cum-Conciliation Officer, Solan sent the failure report to the State Government on 9.9.2004. The petitioner filed an application before the Labour Court under

Section 33-C(2) of the Act on 17th September, 2003. The notice was issued by the Presiding Judge of the Labour Court on 22nd September, 2003. One Mr. Bhupesh Thakur appeared for Shri Rahul Mahajan, Advocate for the respondent-Company. The memo of appearance was filed on 2.4.2004 and the Presiding Judge had directed the filing of power of attorney on the next date. The employer had authorised Mr. Rahul Mahajan, Advocate to appear and represent it in the proceedings pending before the Labour Court, Shimla vide authorization letter dated 28.4.2004. The petitioner filed an application under Section 36(3) of the Act objecting the appearance of Mr. Rahul Mahajan, Advocate on behalf of the employer. The application was listed before the Presiding Judge on 30.4.2004 on which date the notice was issued and the matter was directed to come up for reply on 5.7.2004. Mr. Rahul Mahajan, Advocate appeared on 5.7.2004. Though the reply to the main case was filed, but reply to application under Section 36(3) of the Act was not filed. The learned Presiding Judge had granted time to file reply to the objections on 20.8.2004. Mr. Rahul Mahajan, Advocate again appeared before the learned Presiding Judge on 20.8.2004 and on that date too, the time for filing the reply to the objections was enlarged. The learned Presiding Judge passed the following order on 10.11.2004 which is reproduced in its entirety:-

> **"Shri Anil Kumar Mahta petitioner objects appearance of advocate in the present case on behalf of respondent and an application to this fact has also been filed. In the absent of consent of petitioner, the**

application is allowed. Let notice be issued to respondent for his appearance for 28.12.2004."

Despite the order passed by the learned Presiding Judge on 10.11.2004, Mr. Rahul Mahajan, Advocate was permitted to appear on behalf of the employer on 16.3.2005 and 8.6.2005. One Ms. Veena Sood, Advocate appeared for respondent on 24.8.2005. Mr. Rahul Mahajan again appeared before the Presiding Judge on 8.11.2005 and Ms. Veena Sood appeared for the employer on 29.12.2005. Mr. Rahul Mahajan, Advocate was again permitted to appear on 8.5.2006. The application preferred by the petitioner under Section 33-C(2) of the Act was dismissed by the Presiding Judge on 17.11.2006.

The petitioner appeared in person and has strongly contended that the order dated 17.11.2006 is not sustainable in the eyes of law. He then contended that the learned Presiding Judge has committed serious illegality by permitting the Advocates to appear on behalf of the employer despite the specific order dated 10.11.2004 which has seriously prejudiced his case. He further contended that the statements recorded vide AW-1, PW-2 and PW-3 were not at all considered by the Labour Court in the order dated 17.11.2006, which had vitiated the entire proceedings.

I have heard the parties and perused the record.

It will be apt to take note of Section 36 of the Industrial Disputes Act, 1947 here before considering the submissions made by the petitioner in person and Mr. Vishal Panwar, Advocate on

behalf of the employer. Section 36 of the Act is reproduced below:-

"[36. Representation of parties.–(1) A workman who is a party to dispute shall be entitled to be represented in any proceeding under this Act by–

(a) [any member of the executive or other office bearer] of a registered trade union of which he is a member;

(b) [any member of the executive or other office bearer] of a federation of trade unions to which the trade union referrer to in clause (a) is affiliated;

(c) Where the worker is not a member of any trade union, by [any member of the executive or other office bearer] of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by–

(a) an officer of an association of employers of which is a member;

(b) an officer of a federation of association of employers to which the association referred to in clause (a) is affiliated;

(c) where the employer is not a member of any association of employers, by an

officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

(4) In any proceeding [before a Labour Court, Tribunal or National Tribunal], a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and [with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be].]

[36A. Power to remove difficulties.–(1) If, in the opinion of the appropriate government, any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal or National Tribunal as it may think fit.

(2) The Labour Court, Tribunal or National Tribunal to which such question is referred shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties.]

[36B. Power to exempt.–Where the appropriate Government is satisfied in relation to any industrial establishment or undertaking or any class of industrial establishments or undertakings carried on by a department of that Government that adequate

provisions exist for the investigation and settlement of industrial disputes in respect of workmen employed in such establishment or undertaking or class of establishments or undertakings, it may, by notification in the Official Gazette, exempt, conditionally or unconditionally such establishment or undertaking or class of establishments or undertakings from all or any of the provisions of this Act.]"

The petitioner had filed application under Section 33-C(2) of the Act on 17.9.2003. It is settled law by now that the legal practitioners can be permitted to appear on behalf of the Management with the consent of the other party and leave of the Court/Tribunal. Both the conditions are required to be satisfied. It is in this back-drop that the submission of the petitioner is to be considered with regard to the violation of Section 36 of the Act.

The Presiding Judge had permitted the lawyer to appear first time on 2.4.2004 when one Shri Bhupesh Thakur, Advocate appeared vice Mr. Rahul Mahajan, Advocate, who was permitted to file the power of attorney on the next date. Mr. Rahul Mahajan was authorised to appear and represent the Company, i.e. Management vide authority letter dated 28.4.2004. The application was filed by the petitioner on 30.4.2004 under Section 36(3) of the Act. The reply was not filed by the employer as is evident from orders dated 5.7.2004 and 20.8.2004 and in the mean time the reply to the application as well as rejoinder were permitted to be filed by the learned Presiding Judge. The application preferred by the petitioner was allowed by the Presiding Judge on 10.11.2004; meaning thereby that the legal practitioner/Advocate could not

appear before the Labour Court in the proceeding emanating under Section 33-C(2) of the Act. Despite the order dated 10.11.2004, which in its entirety has been reproduced hereinabove, the Presiding Judge had permitted Shri Mahajan to appear on behalf of the Management on 16.3.2005 and 8.6.2005. Ms. Veena Sood, Advocate was permitted to appear on 24.8.3005 and thereafter Mr. Mahajan was permitted to appear on 18.11.2005 and Ms. Veena Sood was permitted to appear on 29.12.2005 on behalf of the Management. Mr. Rahul Mahajan again appeared for the Management on 8.5.2006. Thereafter the application preferred by the petitioner was abruptly dismissed on 17.11.2006 and Mr. Mahajan was again permitted to appear on that date.

One Shri Abhishek Sharma had appeared as AW-1 before the Labour Court on 7.3.2005 and had produced the photo copy of the attendance register. The petitioner had appeared as PW-2 before the Labour Court and had testified that he was engaged as an Engineer to do the Clerical and technical jobs and he used to work from 9.30 AM to 9 PM. He has denied in his cross-examination that he was discharging the managerial or supervisory duties. The statement of PW-2, dated 8.6.2005 has not at all been considered by the learned Presiding Judge while announcing the order dated 17.11.2006. The order dated 17.11.2006 is sketchy. The learned Presiding Judge was bound to give a positive finding only after considering the evidence on record whether the petitioner was a workman or not. The Labour Court was required to look into whether the case of the petitioner was covered under

Section 33-C(2) of the on the basis of the material placed on record by the parties instead of coming to the abrupt conclusion that the matter was required to be adjudicated upon before the application could be considered under Section 33-C(2) of the Act.

Now the Court has to consider whether Mr. Rahul Mahajan could be permitted to appear on behalf of the employer after order dated 10.11.2004 or not.

The application was allowed by the Presiding Judge preferred by the petitioner under Section 36(3) of the Act on 10.11.2004 and after that under no circumstance Shri Mahajan could be permitted to represent the employer. It appears that the Presiding Judge had not even cared to peruse the earlier orders beginning from 10th November, 2004 onwards. This act of the learned Presiding Judge or permitting the Advocate to appear despite the order dated 10.11.2004 amounts to serious procedural illegality and impropriety. The learned Presiding Judge has even permitted the Advocate to appear at the time when the order dated 17th November, 2006 dismissing the application of the petitioner was passed. The petitioner has definitely been prejudiced by the act of the learned Presiding Judge permitting the learned Advocate to appear on the dates as mentioned even after the order dated 10.11.2004.

Their Lordships of the Hon'ble Supreme Court have considered the true import of Section 36 of the Act in ***Paradip Port Trust, Paradip v. Their Workmen, AIR 1977 SC 36.*** Their Lordships have held as under: -

"Restriction on parties in respect of legal representation before Industrial Court is not a new phenomenon. It was there in England in the Industrial Courts Act, 1919 (9 & 10 Geo 5 c 69) and does not appear to be altered even by the Industrial Relations Act, 1971. Section 9 of the English Act provides that except as provided by rules, "no person shall be entitled to appear on any such proceedings by counsel or solicitor." However, Rule 8 of the Industrial Court (Procedure) Rules 1920 allows persons to appear by counsel or solicitor with permission of the court.

The Act envisages investigation and settlement of industrial disputes and with that end in view has created various authorities at different levels all independent of one another. The word adjudication occurs only with reference to labour courts, industrial tribunals and national tribunals. These bodies are manned by Judges of High Courts or by officers with appropriate judicial and labour law experience. The conciliation proceedings held by a Board or a Conciliation Officer are mainly concerned with mediation for promoting settlement of industrial disputes. It is reasonable to suppose that the presence of legal practitioners in conciliation may divert attention to technical pleas and will detract from the informality of the proceedings impending smooth and expeditious settlement. Legal practitioners entrusted with their briefs cannot be blamed if they bring-forth their legal training and experience to the aid and benefit of their clients. But labour law operates in a field where there are two unequal contestants. The Act, therefore, takes care of the challenge of the situation in which the weaker party is pitted against the stronger before adjudicating authorities. That appears to be one of the reasons for

introducing consent of the parties for representation by legal practitioners. Employers, with their purse, naturally, can always secure the services of eminent counsel.

The question that arises for consideration will turn on the interpretation of Section 36 of the Act which may be quoted:

36 (1). A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by–

(a) any member of the executive or other office-bearer of a registered trade union of which is a member;

(b) any member of the executive or other office-bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by any member of the executive or other office-bearer of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorised in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by–

(a) an officer of an association of employers of which he is a member;

(b) an officer of a federation of associations of employers to which the association referred to in clause (a) is affiliated;

(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

(4) In any proceeding before a Labour Court, Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be."

Section 36 provides for representation of parties before the Tribunals and the Labour Court. Under Section 36 (1) a workman who is a party to a dispute shall be entitled to be represented in any proceedings under the Act by three classes of officers mentioned in (a), (b) and (c) of that sub-section. Similarly under Section 36 (2) an employer who is a party to a dispute shall be entitled to be represented in any proceeding under the Act by three classes of officers mentioned in (a), (b) and (c) of that sub-section. By sub-section (3) a total ban is imposed on representation of a party to a dispute by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court of enquiry. Then comes Section 36 (4) which introduces the requirement of prior consent of the opposite party and leave of the Tribunals and of the

Labour Court, as the case may be, for enabling a party to be represented by a legal practitioner.

Under the scheme of the Act the parties to an industrial dispute are employers and employers; employers and workmen; and workmen and workmen (Section 2 (k)). The definition of "appropriate Government" under Section 2 (a) of the Act lays bare the coverage of industrial disputes which may be raised concerning, amongst others, several types of corporations, mentioned therein, companies, mine, oil field, cantonment board and major port. The definition of employer under Section 2 (g), which is a purposive but not an exhaustive definition, shows that an industrial dispute can be raised in relation to an industry carried on even by the Government and by local authorities. It need not be added that industry is also carried on by private owners, private companies and partnerships. Employers and workmen will, therefore, be drawn from numerous sources. Leaving aside for the present industrial disputes between employers and employers and workmen and workmen, such disputes, almost, always are between employers and workmen. Prior to the insertion of Section 2A in the Act by the Amendment Act 35 of 1965 a dispute raised only by a single individual workman did not come under the category of an industrial dispute within the meaning of Section 2 (k). Left to himself, no remedy was available to such an aggrieved individual workman by means of the machinery provided under the Act for adjudication of his, dispute. Such an individual dispute, for example, relating to the discharge or dismissal of a single workman, however, became an industrial dispute only if a substantial body of workmen or a union of workmen espoused his cause. The trade union of workmen,

therefore, comes to be recognised as a live instrument under the Act and has an active role to play in collective bargaining. Thus, so far as workmen are concerned, union is, almost, always involved in the dispute from the inception. Since the dispute, itself, in a large number of cases takes the character of industrial dispute from participatory involvement of the trade union, the Act confers an unbartered right upon the workmen to be represented by a member of the executive or by an office-bearer of a registered trade union. It is, therefore, in the very scheme of things that a workman's absolute right to be represented by an office-bearer of the union is recognised under the Act. Indeed it would have been odd in the entire perspective of an industrial dispute and the objects and purposes of the Act not to give due recognition to the union. But for a provision like Section 36 (1) of the Act, there may have been difficulty under the general law in the way of the office-bearers of the union representing workmen before the adjudicating authorities under the Act unless, perhaps, regulated by the procedure under Section 11 of the Act. To put the matter beyond controversy an absolute right is created in favour of the workmen under Section 36 (1) in the matter of representation. Having made such a provision for the workmen's representation the employer is also placed at par with the workmen in similar terms under the Act and the employer may also be represented by an officer of the association of employers of which the employer is a member. The right is extended to representation by the office-bearers of the federation of the unions and by the officers of the federation of employers. The provisions of Ss. 36 (1) and 36 (2) confer on the respective parties absolute rights of representation by reasons respectively specified therein. The rights of representation under Section 36

(1) and Section 36 (2) are unconditional and are not subject to the conditions laid down under Section 36 (4) of the Act. The said two sub-sections are independent and stand by themselves.

As stated earlier, Section 36 deals with representation of the parties. Neither the Act nor Sec. 36 provides for appearance of the parties themselves when they are individuals or companies or corporations. The Tribunals and the Labour Courts being quasi-judicial authorities dealing with rights affecting the parties cannot adjudicate their disputes in absence of the parties. It is, therefore, incumbent upon the Tribunals and Labour Courts to afford reasonable opportunity to the parties to appear before them and hear them while adjudicating industrial disputes. This position is indisputable. Section 36, therefore, is no exhaustive in the sense that besides the persons specified therein there cannot be any other lawful mode of appearance of the parties as such. As indicated earlier Section 36 does not appear to take count of companies and corporations as employers. It is, however, common knowledge that industrial disputes are raised in a predominantly large number of cases where companies or corporations are involved. Since companies and corporations have necessarily to appear through some human agency there is nothing in law to prevent them from being represented in any lawful manner. As Salmond says:

> **"Every legal person, therefore, has corresponding to it in the world of natural persons certain agents or representatives by whom it acts.. ……."**

(Salmond on Jurisprudence, 12th Edition, page 312.)

It is not intended under the Act that companies and corporations are confined to representation of their cases only through the officers specified in Section 36 (2) of the Act. They can be represented by their directors or their own officers authorised to act in that behalf in a lawful manner provided it is not contrary to any provision of the Act. This would not, however, mean that the companies and corporations, and for the matter of that any party, are free to engage legal practitioners by means of a special power of attorney to represent their interests before the Tribunals without consent of the opposite party and leave of the Tribunal.

Again, although under Section 36 (2) (c) there is provision for the contingency of an employer not being a member of an association of employers, the device of representation provided therein would not fit in the case of a Government Department or a public corporation as an employer. These categories of employers, known to the Act, will be put to the most unnatural exercise of enlisting the aid of an out-side association, albeit connected with the same type of industry, to defend their cases before Tribunals. Such an absurd intent cannot be attributed to the legislature in enacting Section 36, which will be, if that Section is the be all and end all of the types of representations envisaged under the Act. The impossibility of the position indicated above is a crucial pointer to Section 36 being not exhaustive but only supplemental to any other lawful mode of representation of parties.

The parties, however, will have to conform to the conditions laid down in Section 36 (4) in the matter of

representation by legal practitioners. Both the consent of the opposite party and the leave of the Tribunal will have to be secured to enable a party to seek representation before the Tribunal through a legal practitioner qua legal practitioner. This is the clear significance of Section 36 (4) of the Act.

Consent of the opposite party is not an idle alternative but a ruling factor in Section 36 (4). The question of hardship, pointed out by the Solicitor General, is a matter for the legislature to deal with and it is not for the courts to invoke the theory of injustice and other consequences to choose a rather strained interpretation when the language of Section 36 is clear and unambiguous.

A lawyer, simpliciter, cannot appear before an Industrial Tribunal without the consent of the opposite party and leave of the Tribunal merely by virtue of a power of attorney executed by a party. A lawyer can appear before the Tribunal in the capacity of an office bearer of a registered trade union or an officer of associations of employers and no consent of the other side and leave of the Tribunal will, then, be necessary."

In ***Prasar Bharathi Broadcasting Corporation of India and Suraj Pal Sharma & Another, 1999-I L.L.J. 1306*** the Hon'ble single Judge of Delhi High Court has held that the legal practitioner cannot appear on behalf of the parties in the proceedings before the Labour Court or Tribunal without the consent of other parties to the proceedings. The Hon'ble Single Judge has held as under:

"Learned counsel for the petitioner contended that the workman had not objected to the representation of the management by the Additional Central Government

Standing Counsel earlier in the very same proceedings and hence he could not be allowed to raise any objection at a later stage. Such a contention had been raised in the reply filed by the management to the workman's application under Section 36(4) of the ID Act. The impugned order does not say that the management was not earlier represented by the Central Government Counsel. But the Tribunal has specifically stated that the management representative was not able to show that he was appearing with the consent of the other party and with the leave of the Tribunal. It would appear that earlier the Additional Central Government Counsel had been representing the management and that only when Mr. Anil Sehgal entered appearance the workman raised the objection filing a formal application. It is not clear why the workman did not raise any objection earlier. But merely because the workman did not object earlier, he cannot be precluded from objecting at a later stage. There could be several reasons for a workman for not raising the objection at the early stage of the proceedings. One of them could be that he was not aware of the statutory provision and his right to raise such objection. Another reason could be that the workman realised only belatedly his handicap in not being able to engage a legal practitioner while the management was being represented by a legal Practitioner. Only at a later stage, he must have started feeling the strain and stress caused by the unequal strength of the Parties in the adjudication Proceedings before the Tribunal. In such circumstances it will not be just or proper to preclude a workman from objecting to the representation of the management by a legal Practitioner only on the ground that such objection had not been taken earlier.

Learned counsel for the petitioner contended that the failure of the workman to raise the objection during the early stages of the proceedings amounted to 'implied consent' and that there was no provision for revoking the consent already given. To consider the above contention of the learned counsel it is necessary to have a correct perception of the provisions contained in Section 36 of the ID Act. Intention of the law is to discourage representation of parties by legal practitioners in such proceedings. The law also recognise the unequal strength of the parties in adjudication before a Tribunal. Section 36(4) permits representation of a party by a legal practitioner only with the consent of the other parties to the proceeding and with the leave of the Tribunal. Such consent has to be clear and positive. There should be some positive act of conduct on the part of the party indicating his consent. To consider the failure or inaction of a party in raising the objection at the early stages of the proceeding as 'implied consent' and to deny him the right to object to the representation of the other party by a legal Practitioner, will be against the spirit and content of the provisions of Section 36 of the ID act. The concept of 'implied consent' cannot be imported to the provision in Section 36(4) of the ID Act. As per Section 36(4) the consent of the other parties to the proceeding and the leave of the Tribunal are mandatory preconditions for the representation of a party by a legal practitioner. There is no specific provision in the ID Act or in the Rules issued thereunder, which lays down a particular procedure for seeking the consent of the opposite parties or the leave of the Labour Court/Tribunal. Hence the Labour Court/Tribunal will have to follow a reasonable and fair procedure for giving effect to the provisions of Section 36(4). The procedure has to be in

tune with the principles underlying the particular provision and also in furtherance of the object of the provision. Hence if a party to the proceeding intends to engage a legal practitioner, he should specifically seek leave of the Tribunal and the Tribunal, after ascertaining and considering the stand of the other parties, should record its decision, granting or refusing leave. In this process the other parties to the proceeding will get an opportunity to positively express their consent or objection to the representation of a party by a legal practitioner. The record of the proceedings before the Tribunal will also disclose whether the other parties to the proceeding have given their consent or not. Thus the occasion for giving consent by the other parties to the proceedings arises only when a party formally seeks leave of the Tribunal for representation by a legal practitioner and when the said request is considered by the Tribunal. If a party to the proceeding has given his consent in the manner stated above he may be precluded from revoking the consent already given. But in the absence of any consent given in the manner stated above the question of revocation of consent does not arise.

In the impugned order the learned Industrial Tribunal has categorically stated that the representative of the management was not able to show that he was appearing with the consent of the other party and with the leave of the Tribunal. The petitioner has no case that the management had at any time formally sought the leave of the Tribunal or that the Tribunal had considered the request after ascertaining the stand of the workman or that the workman had expressed his consent for the representation of the management by a legal practitioner. The petitioner has also no case that

at any time the Tribunal had granted leave to the management for being represented by legal practitioner. The materials placed on record would indicate that the question of representation of the management through a legal practitioner came up for the active consideration of the Tribunal for the first time only when the workman filed an application under Section 36(4) of the ID Act raising objection to the appearance of the Additional Central Government Standing Counsel on behalf of the management. Hence in this case the workman had not given any consent as contemplated under Section 36(4) of the ID Act. Consequently there is no revocation of a consent already given. I may also observe that in the writ petition the petitioner has no case that the workman had given his consent of that the Tribunal had granted leave. The only contention is that the workman had not earlier objected to the appearance of the legal practitioner on behalf of the management. Since the workman had not at any time given his consent under Section 36(4) the failure of the workman to object to the representation of the management by the Additional Central Government Standing Counsel at early stages cannot preclude the workman from raising the objection at a later stage."

Similarly, the Hon'ble Single Judge of Rajasthan High Court in ***Pali Central Co-operative Bank Ltd., Pali and Judge, Industrial Tribunal Cum Labour Court, Jodhpur and Another, 2000-III-L.L.J. (Suppl.) 1524*** has held that the legal practitioner can appear before the Tribunal only if there is consent of the other party to the proceedings and that too with the leave of the Tribunal. The Hon'ble Single Judge has held as under:-

"With greatest respect to the learned single Judge of the Kerala High Court, I may state that the learned Judge has not at all considered the provisions of Section 36(3) of the Act which provides that no party to the dispute shall be entitled to be represented by legal practitioner in any conciliation proceedings under the Act or in any proceedings before the Court. The Court includes the Tribunal. Thus, there is a clear embargo on a legal practitioner appearing in any proceedings before the Tribunal under Section 36(3) of the Act, however, the said embargo is lifted under Section 36(4) of the Act only if there is a consent of the other parties to the proceedings and that too with the leave of the Tribunal. Under the circumstances, mere filing of the *vakalatnama* by an Advocate for the bank before the Tribunal was not sufficient. If the Bank wanted to be represented through its lawyer, then it was expected from the Bank to file an application before the learned Tribunal to that effect and seeking consent from the respondent workman for that, which was not done in this case. That apart, even assuming for the sake of arguments that when *vakalatnama* was filed by the lawyer for the Bank and the representative of the workman not objected to that, that itself was not sufficient because Section 36(4) of the Act clearly provides that it should be with the leave of the Tribunal. Unless and until the Tribunal grants leave or permission to the Bank to appear through the lawyer, it cannot be presumed that there was a consent. In any case, one can never presume that allowing the advocate to file his *vakalatnama* for the Bank before it, the Tribunal deemed to have granted that leave or permission. There should be such order in writing."

In view of the observations made hereinabove coupled with the judgments referred to above, the procedure adopted by the learned Presiding Judge, H.P. Industrial Tribunal-cum-Labour Court, Shimla by permitting the Advocate to appear despite the order dated 10.11.2004 cannot be approved. The petitioner has been prejudiced by the presence of the learned Advocate who has been permitted to appear against him even on 17.11.2006 resulting in dismissal of his application preferred under Section 33-C(2) of the Act. The order dated 17.11.2006 is liable to be quashed and set aside on the ground that the Presiding Judge has permitted the appearance of the Advocate on various dates as mentioned above and also the order is sketchy and not a speaking order. The learned Presiding Judge has failed to take into consideration the para-meters laid down under the Industrial Jurisprudence to determine when a person can be termed as workman. The Labour Court had committed manifest illegality by not considering the statements of AW-1, PW-2 and PW-3 in the impugned order. The Labour Court was bound to consider the statements recorded during the proceedings at the time of final order. The Labour Court has also failed to take into consideration the principles laid down by the Hon'ble Supreme Court for invoking Section 33-C(2) of the Act notably **AIR 1964 SC 743, AIR 1968 SC 219, AIR 1972 SC 452, 2000(1) LLJ 288, 2001(3) LLJ (Suppl.) 861 and 2006 (3) SCT 397.**

Consequently, the writ petition is allowed. In view of the observations made hereinabove, the order dated 17.11.2006 is

quashed and set aside. The matter is remanded back to the Labour Court-cum-Industrial Tribunal, Shimla to adjudicate upon the same afresh. The statement already made by the petitioner as PW-2, statement made by Shri Dinesh Pant as PW-3 and statement made by AW-1 will not be disturbed, meaning thereby they need not be summoned again and the statements already made by them will be read as evidence, but the parties are permitted to lead any further evidence permissible under the law before the Labour Court-cum-Industrial Tribunal. To avoid delay, the parties are directed to appear before the Labour Court-cum-Industrial Tribunal, Shimla on 28th November, 2007.

Since the petitioner had appeared in person, the Registry is directed to apprise the petitioner of the judgment rendered by the Court.

There shall be no order as to costs.

November 05, 2007. **(Rajiv Sharma), Judge.**
(sck)